ELECTION COMMISSION, INDIA.

NEW DELHI,
Dated the 31st October, 1967.

NOTIFICATION.

No. 82/MY/5/67.—In pursuance of Section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order pronounced on the 10th August 1967, by the High Court of Mysore at Bangalore in Election Petition No. 5 of 1967.

IN THE HIGH COURT OF MYSORE AT BANGALORE.

Dated the 10th day of August, 1967.

Before

THE HON'BLE MR. JUSTICE G. K. GOVINDA BHAT.

Election Petition No. 5 of 1967.

Sri Ganji Veerappa
Son of Basappa, age 53 years,
Advocate, Davangere,
District Chitradurga.
(By Sri V S. Malimath,
Sri B. K. Ramachandra Rao and
Sri K. S. Vasudeva Murthy) ... *Petitioner.*

Vs.

Sri H. Siddaveerappa,
Son of Gurusiddappa,
age about 62 years, Advocate,

P. J. Extension, Davangere,
District Chitradurga.
(By Sri K. R. Karanth and
Sri K. R. D. Karanth) .... *Respondent.*

Election Petition filed by the Petitioner under section 81, of the Representation of the People Act, 1951, challenging the election of the Respondent to the Mysore Legislative Assembly from No. 38, Harihar constituency in the Central Election held in February 1967 and seeking an order that the election of the Respondent as member of the Mysore Legislative Assembly from the Harihar Constituency in respect of the 1967 General Election be declared void and further be declared the petitioner is duly elected as member of the Mysore Legislative Assembly from the Harihar Constituency in respect of the 1967 General Elections and to award costs of this petition.

This Election Petition coming on for trail on Monday the 24th, Tuesday the 25th, Wednesday the 26th, Thursday the 27th, Friday the 28th, Monday the 31st days of July, Tuesday the 1st, Wednesday the 2nd, Thursday the 3rd, days of August 1967 in the presence of Sri V. S. Malimath, Sri B. K. Ramachandra Rao and Sri K. S. Vasudevamurthy, Advocates for the petitioner and Sri K. R. Karanth, and Sri K. R. D. Karanth Advocate for the Respondent and this Election Petition having stood over for consideration, the Court made the following order this Thursday 10th day of August 1967.

ORDER

In the election to the Mysore Legislative Assembly from No. 38 Harihar Assembly Constituency held in February 1967 the petitioner and the Respondent were the two candidates who contested the seat; the petitioner was a Congress candidate and the Respondent was a Janatha Paksha Candidate. The poll was held on February 19th; the counting of votes took place at the Town Municipal Hall, Davangere on the 21st and 22nd February and the

Returning Officer declared that the Respondent has been duly elected to fill the seat. According to the return of election in Form No. 21, the votes secured by the petitioner and the Respondent were 22,097 and 22,601 respectively. 2,172 votes were rejected as invalid.

On April 5, 1967 the petitioner filed the above Election petition claiming a declaration that the election of the Respondent the returned candidate be declared as void and that he himself has been duly elected. The petitioner has stated that he has received a majority of valid votes and the Respondent has been declare as elected as a result of improperly conducted counting and therefore he has prayed for scrutiny and recount of all the ballot papers.

In the Election Petition, the Petitioner after describing the procedure of counting followed, has alleged that the Returning Officer during the counting attended to only general supervision and that the Assistant Returning Officers were content with the scrutiny of the 'doubtful' ballot paper bundles sent by the Counting supervisors and they did not scrutinise the valid ballot papers bundles sent by the Counting Supervisors and all that they did was to pick one or two bundles of 50 ballot papers and merely count their number while doing the test checking and they did not scrutinise the ballot papers contained in the said bundles to find out if they contained invalid ballot papers or ballot papers belonging to the wrong candidate. The petitioner has further alleged that his counting agents were denied the opportunity to examine the ballot papers before they were counted and their objections were not headed to by the Counting Supervisors who while sorting the ballot papers put in the tray of the Respondent as many as 1,651 invalid ballot papers despite objections. The Petitioner also alleged that his counting agents requested the Assistant Returning Officers after the completion of the counting, to scrutinise all the ballot papers and thereafter declare the result, but the said request was rejected on the ground that the valid ballot paper bundles had already been scrutinised by the counting Supervisors.

The Petitioner has urged the following grounds for inspection, scrutiny and recount :

(1) that on all the ballot papers were printed serial Numbers which amounts to putting a mark by which an elector can be identified and consequently all the ballot papers ought to have been rejected under Rule 56(2) (a) of the Conduct of Election Rules, 1961, hereinafter called the 'Rules',

(2) that all the ballot papers polled at Polling Station No. 5, Guttur, numbering 643 should have been rejected under Rule 56(2)(h) since they did not bear the seal which they should have borne under the provisions of Rule 38(1),

(3) that the Assistant Returning Officers, have improperly rejected about 550 ballot papers which ought to have been accepted as valid votes in favour of the petitioner, and,

(4) That the counting agents of the Petitioner were denied the opportunity to examine the ballot papers before they were counted and their objections were not considered at all by the Counting Supervisors who had put in the Respondent's tray 1,651 invalid ballot papers and that the Assistant Returning Officers have improperly accepted the said ballot papers in favour of the Respondent.

The Respondent by his written statement denied the allegations alleging irregularity in the count and scrutiny of votes and in regard to the ballot papers polled at Polling Station No. 5, Guttur, he contended that if the ballot papers did not bear the seal or mark as required under Rule 38(1), it was the mistake of the presiding officer or the polling Officer. The Respondent submitted that the Election Petition has been filed at the instance of the election Petitioner's friend the Hon'ble Sri S. Nijalingappa, the Chief Minister of Mysore, who has been on inimical terms with the Respondent for the past several years, and that the Chief Minister got transferred many officers to the Harihar Assembly constituency on the eve of the

election in order to help the petitioner and that the Returning Officers, the Assistant Returning Officers, Counting Supervisors and Counting Assistants were generally favouring the petitioner as against the Respondent. He has further submitted that after the declaration of the result was made and the Respondent was given a certificate of election by the Returning Officer, he and his counting agents left the counting hall before the ballot papers were properly sealed and that he suspects that taking advantage of the situation, the Returning Officer and other concerned with the ballot papers may have tempered with the ballot papers. The Respondent has claimed that in the event of this Court ordering recount, then recount in respect of all the ballot papers concerned in the election may be ordered and he has submitted that the averments made in paragraphs 2, 4 and 5 of his written statement may be treated as a recrimination.

On the pleadings, the following issues were settled on June 30, 1967:

(1) Whether all the ballot papers should have been rejected by the Returning Officer under Rule 56 2) (a) of the Conduct of Election Rules, 1961, on the ground that the serial numbers were printed on the ballot papers?

(2) Does the Election Petition contain an adequate statement of material facts for scrutiny and recount of votes?

(3) Whether the Election Petitioner has made out a *prima facie* case for inspection, scrutiny and recount of ballot papers?

(4) Whether the result of the election, in so far as it concerns the Respondent, has been materially affected by improper reception, refusal or rejection of any vote or reception of any vote which is void?

(5) Whether the 613 ballot papers issued in respect of Booth No 5 of Guttur village did not bear the mark which they should have borne under the provisions of sub-rule (1) of Rule 38?

(6) If the ballot papers referred to in Issue No. 5 did not bear the mark, was the defect caused by any mistake or failure on the part of the presiding Officer or polling Officer, and whether they should have been rejected under Rule 56 (2) (b) ?

(7) In the event of a recount being ordered, whether the averments made by the Respondent in paragraphs 2, 4, 5 and 12 of his counter statement contain an adequate statement of Material facts for granting the recriminatory relief ?

(8) In the event of a recount being ordered, whether the Respondent has made out a *prima facie* case for inspection scrutiny and recount of the ballot papers accepted as valid in favour of the petitioner ?

(9) whether the Election petitioner is entitled to a declaration that the election of the Respondent is void and for a further declaration that the election petitioner is duly elected ?

(10) What reliefs?

Issue Nos. (1) and (2) were heard as perliminary issues. By order made on 11th July 1967, I held on issue No. (1) that the contention of the Election Petitioner that all the ballot papers should have been rejected under Rule 56(2) (a) is untenable and has to be rejected. Regarding Issue No.(2), I held that some of the grounds urged for recount cannot be disposed of without evidence and therefore ordered that the said issue should be decided after trial.

The crucial issues in the case are Issues Nos.(2) and (3) and before I deal with them, I shall dispose of Issue Nos.(5) and (6) which relate to the votes polled at polling Station No.5 -Guttur. The petitioner's case which is set out in para IV (9) at page 20 of the pleadings, is that all the ballot papers of that polling station ought to have been rejected under Rule 56 (2) (b) as they do not bear the mark which they should have borne under the provisions of Rule 38 (1) The Respondent besides denying the said allegation has contended that if the ballot papers did not bear the necessary mark, that was caused by the mistake of the concerned

Presiding Officeer or the polling Officer and consequently the said ballot papers were not liable to rejection on the ground of such defect.

The evidence in regard to Issues Nos. (5) and (6) consists of the oral evidence of P. W, 6 Sri Aumaksheriah, one of the Asst. Returning Officers who scrutinised and counted the ballot papers of polling Station No. 5. He has stated that while scrutinising the Guttur polling Station ballot papers the Assistant Returning Officers observed no seals showing the constituency number and the polling station number; instead of the proper seal he found on all the ballot papers the letters 'P. R.O. ' marked with the seal supplied to the presiding Officer for sealing the election papers. It is seen form instruction No. 6 (a) of Chapter VII at page 58 of the Hand Book for Returning Officers, General Elections 1967, that the Election Commission in pursuance of Rule 38 (1) had directed that the serial Number of the Assembly Constituency as given in the Delimitation Order within which the Polling Station is situated as also the serial number of the polling station as given in the list of polling stations for that Constituency shall be rubber stamped on the reverse of each ballot paper. According to the said direction of the Election Commission, the ballot papers issued to the voters from Guttur Polling Station should have been rubber stamped with a seal showing the Constituency Number *viz.*, 38 and the polling Station number *viz.*, No. 5. It is in evidence that such a seal was sent to the Presiding Officer, Guttur Polling Station, besides a seal bearing the letters 'P. R. O.'. But the Presiding Officer of that polling station, instead of marking the ballot papers with the seal showing the constituency number and the polling station number, rubber stamped the 'P. R. O.' seal. When this mistake was discovered by P. W. 6 while he was scrutinising the doubtful ballot papers and also while doing test checking of all the valid ballot paper bundles, he brought this matter to the notice of the Returning Officer. P. W. 6 admitted in his cross-examination that P. W. 1, the election agent of the petitioner, and the Respondent, who were present, raised no objection that the ballot papers of polling Station No. 5 ought

to be rejected and P. W. 6 further stated that the Returning Officer and the Assistant Returning Officers acted on the first proviso of Rule 56 (2) as they were satisfied that the omission to affix the mark prescribed under Rule 38 1) was caused by mistake on the part of the Presiding Officer or the Polling Officer, Guttur.

It was urged by Sri B. K Ramachandra Rao the learned counsel for the petitioner that the Returning Officer without obtaining the reasons from the polling Officer or the presiding Officer, Guttur Polling Station, for not affixing the correct seal, could not have acted under the proviso to Rule 56 (2), as there was no material on the basis of which the Returning Officer could have satisfied that the defect was caused by mistake on the part of the presiding Officer or the Polling Officer.

Apart from the fact that neither P. W. 1 nor the Respondent had raised any objection that the said ballot papers ought to be rejected under Rule 53 (2) (h), the contention of the petitioner, in my opinion, is devoid of any merit. It is the case of the petitioner that all the ballot papers issued to the voters at Polling Station No. 5 were marked with the wrong seal. P. W. 6 has admitted that the Polling Officer was supplied with two seals *viz.*, the seal in accordance with the direction of the Election Commission under Rule 38 (1) as also the 'P. R. O.' seal. From the fact that the Polling Officer had affixed the 'P. R. O.' seal instead of the correct seal on all the ballot papers, it is manifest that the wrong seal was put by mistake of the Polling Officer. Therefore the Returning Officer was right in acting under the first proviso to Rule 56 (2).

Even if all the ballot papers of Polling Station No. 5 are rejected, the petitioner cannot succeed unless he makes out a case for re-count and on such re-count he shows that he has secured the majority of votes. Exhibit R-2 is the final result shown in Form No. 20 which shows that from Polling Station No. 5 Guttur the petitioner received 248 valid votes and the Respondent received 360 valid votes and that 35 votes were rejected. If the votes taken into

account from Polling Station No. 5 are rejected, the margin of difference between the petitioner and the Respondent will be reduced by 112 votes, but that does not affect the result of the election. My answer to Issue No. (5) is in the affirmative, but on Issue No. (6), I hold that the defect was caused by mistake of the Presiding Officer or the Polling Officer and consequently the Returning Officer was right in acting under the first proviso to Rule 56 (2).

I now proceed to deal with Issues Nos. (2) and (3) which are the main issues in the case. Under the scheme of counting of votes contained in Part V of the Rules, the candidate or his election agents have ample opportunity of remaining present at the time of counting of votes, watching the proceedings of the Returning Officer, inspecting any rejected votes and to demand a re-count before the declaration of the result. After declaration of the result, if the counting is still erroneous, the remedy of the aggrieved candidate is by filing an election petition praying re-count. In such a petition, if the High Court is of opinion that the result of the election, in so far as it concerns the returned candidate has been materially affected by the improper reception, refusal or rejection of any vote or reception of any vote which is void and that the petitioner has received a majority of the valid votes it shall declare the election of the returned candidate to be void and the petitioner to have been duly elected.

Section 83 (1) (a) of the Representation of the People Act, 1951, hereinafter called the 'Act', provides that an election petition shall contain a concise statement of material facts on which the petitioner relies. The Supreme Court has laid down that in order to comply with the requirements of Section 83 (1) (a) it is not sufficient if an election petition for inspection, scrutiny and re-count contains a vague plea that invalid votes have been improperly accepted or valid votes have been improperly rejected or that the counting and examination of the votes was done in a very irregular manner. Since the Election Petitioner has ample opportunity to examine the ballot papers before they

are counted and in case the objections raised by him or his election agent have been improperly over-ruled, he knows precisely the nature of the objections raised by him or his agent and the voting papers to which those objections relate. he ought to plead the nature of the objection raised by him or his election agent and the voting papers to which those objections related (*Vide* RAM SEWAK vs. H. K. KIDWAI (1) A. I. R. 1964 S. C. 1249 and JAGJIT SINGH vs. KARTAR SINGH). (2) A. I. R. 1966 S.C. 773.

Gram Sevak's (1) A.I.R. 1964 S.C. 1249 case lays down two conditions pre-requisite before, ordering inspection and scrutiny of ballot papers and further that an order for inspection cannot be granted to support vague pleas made in the election petition not supported by material facts or to fish out evidence to support such pleas. This is what the Supreme Court has stated in the said case.

"7. An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled:

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere

allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.

8. It must be remembered that the rules framed under the representation of the people Act, 1951, set up an elaborate machinery relating to the stage of counting of votes by the returning officer, and provide for ample opportunity to the candidate who has contested the election or his agents to remain present and to keep an eye on any improper action which may be taken by the returning officer.....

9. There can therefore be no doubt that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes, watching the proceedings of the returning officer, inspecting any rejected votes and to demand a recount. Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinised and opened and the votes were counted. He has also opportunity of inspecting rejected ballot papers, and of demanding a recount. It is in the light of the provisions of Section 83 1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which a defeated candidate had at the time of counting, of watching and of claiming a recount that the application for inspection must be considered."

In Jagjit Singh's (2) case, A.I.R. 1966 S.C. 773, Chief Justice Gajendragadkar who delivered the judgment of the Court has laid down the circumstances under which

the Court would be justified in allowing inspection of the ballot boxes in an election petition. This is what the learned Chief Justice has stated:

> ".....In a proper case, the Tribunal can order the inspection of the ballot boxes and may proceed to examine the objections raised by the parties in relation to the improper acceptance or rejection of the voting papers. But in exercising this power, the Tribunal has to bear in mind certain important considerations. Section 83(1)(a) of the Act requires that an election petition shall contain a concise statement of the material facts on which the petitioner relies; and in every case, where a prayer is made by a petitioner for the inspection of the ballot boxes, the Tribunal must enquire whether the application made by the petitioner in that behalf contains a concise statement of the material facts on which he relies. Vague or general allegations that valid votes were improperly rejected, or invalid votes were improperly accepted, would not serve the purpose which Section 83(1)(a) has in mind. An application made for the inspection of ballot boxes must give material facts which would enable the Tribunal to consider whether in the interests of justice, the ballot boxes should be inspected or not. In dealing with this question, the importance of the secrecy of the ballot papers cannot be ignored, and it is always to be borne in mind that the statutory rules framed under the Act are intended to provide adequate safeguard for the examination of the validity or invalidity of votes and for their proper counting. It may be that in some cases, the ends of justice would make it necessary for the Tribunal to allow a party to inspect the ballot boxes and consider his objections about the improper acceptance or improper rejection of votes tendered by voters at any given election;

but in considering the requirements of justice, care must be taken to see that election petitioners do not get a chance to make a roving or fishing enquiry in the ballot boxes so as to justify their claim that the returned candidate's election is void. We do not propose to lay down any hard and fast rule in this matter; indeed, to attempt to lay down such a rule would be inexpedient and unreasonable.

32. Whenever an Election Tribunal is called upon to consider this question, it should not ignore the safe guards which have been prescribed by the relevant Rules in part V of the Conduct of Election Rules, 1961. Let us briefly indicate the broad features of these Rules. Under R. 53, candidates, their election agents or counting agents are admitted to the place fixed for counting of votes. Rule 54 emphasises the importance of the maintenance of secrecy of voting. Rule 55 deals with the scrutiny and opening of ballot boxes; before a ballot box is opened at a counting table, the counting agents present at that table shall be allowed to inspect the paper seal or such other seal as might have been affixed thereon and to satisfy themselves that it is in fact. The Returning Officer has himself to take care to "see, that no ballot box has been tampered with. In case any tampering of the ballot boxes is disclosed, the Returning Officer has to take action under R. 54. Rule 56 provides for the scrutiny and rejection of ballot papers. R. 56 (1) lays down that the ballot papers taken out of each ballot box shall be arranged in convenient bundles and scrutinised. The objections are raised as specified by sub-rule (2) and are dealt with in accordance with the provisions of other sub clauses of R. 56(2). It is thus clear that the scheme of R. 56 is that every ballot paper can be examined by the counting

agent and objections can be raised in respect of it if the election agent feels that a valid objection can be raised. It is after these objections are examined and dealt with according to R. 56 that the stage of counting votes arrives. Even after the completion of the counting, it is open to a candidate or his election agent to apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount. That is the effect of rule 63 (2). After all this procedure has been gone through, the Returning Officer completes the result sheet in Form 20, and signs it. Once that is done, no application for a recount shall be entertained. We have referred broadly to the scheme of these Rules to emphasise the point that the election petitioner who is a defeated candidate, has ample opportunity to examine the voting papers before they are counted, and in case the objections raised by him or his election agent have been improperly over-ruled, he knows precisely the nature of the objections raised by him and the voting papers to which those objections related. It is in the light of this background that S. 83 (1) of the Act has to be applied to the petition made for inspection of ballot boxes. such an application must contain a concise statement of the material facts."

The first question for determination is whether the election petition contains an adequate statement of the material facts for inspection, scrutiny and recount. The grievance of the Election petitioner is that 1, 651 invalid votes have been received in favour of the Respondent not heeding the objections raised by the petitioner's counting agents, and that 550 votes which ought to have been accepted in favour of the petitioner have been improperly rejected by the Assistant Returning Officers. The Election petitioner has not given the serial numbers of the ballot

papers which he complains to have been either improperly accepted or improperly rejected. An explanation has been offered in the Election Petition for not giving the number of the ballot papers said to have been improperly accepted and that reason is that the counting supervisors sorted the ballot papers so briskly that it was not possible for the petitioner's counting agents to note the serial numbers and other particulars of the objectionable ballot papers and that the Counting Supervisors denied them the opportunity to examine the ballot papers. His further grievance is that the Returning Officer merely attended to the general supervision of the counting and it was the two Assistant Returning Officers that did the scrutiny and counting and the said Assistant Returning Officers did not scrutinise at all the ballot papers sent by the Counting supervisors as valid ballot papers of the two candidates and all that they did was to take one or two bundles of 50 ballot papers and merely count their number without verifying whether they contained any invalid ballot papers or ballot papers belonging to the wrong candidate. Therefore, it was urged that the Election Petitioner was not in a position to give the serial numbers and other particulars of the 1,651 ballot papers improperly accepted in favour of the Respondent. The learned counsel for the Petitioner at first conceded that the Election Petition does not contain the nature of the objections; but at a later stage of the arguments he submitted that sub-paragraphs 5 6 and 7 of para IV state the nature of the defects in the ballot papers alleged to have been improperly accepted; in the alternative, the learned counsel urged that since the objections could be stated only in relation to the particular ballot papers no purpose is served by setting out the nature of the objections in the absence of their serial numbers.

The Respondent has not specifically raised a contention that the Election Petition is not in conformity with the requirements of Section 83 (1) (a) of the Act The two decisions of the Supreme Court to which I have referred proceed on the assumption that the defeated candidate has ample opportunity to examine the voting papers before

they are counted and in case the objections raised by him or his election agent have been improperly over-ruled, he knows precisely the nature of objections raised by him and the voting papers to which those objections relate. But, in the instant case, the grievance of the Election Petitioner is that his counting agents were denied the opportunity to examine the ballot papers before they were counted and, their objections were not considered at all by the Assistant Returning Officers. But with respect to this pleading that 550 votes were improperly rejected, it is not the petitioner's case that his election agent was not afforded a reasonable opportunity to inspect the ballot papers before they were rejected. The Petitioner has not alleged that the ballot papers sent in the 'doubtful' bundles by the Counting supervisors were not properly scrutinised by the Assistant Returning Officers or before any ballot paper was rejected, his election agent present was not afforded a reasonable opportunity to inspect the ballot papers. When the petitioner's election agent had ample opportunity to note the particulars of the ballot papers said to have been improperly rejected, the petitioner should have given the serial numbers and the polling station numbers of the said ballot papers and the nature of the objections in relation to the said ballot papers.

According to Exhibit R-I, the Form No. 16 Ballot paper Account in respect of the 68 polling stations in the Haribar Assembly Constituency, the counting supervisors had included in the 'doubtful' bundles 2,953 ballot papers for scrutiny by the Returning Officer or the Assistant Returning Officers. The Returning Officer and the Assistant Returning Officers after scrutiny rejected 2,172 votes as invalid and accepted 474 votes in favour of the petitioner and 312 votes in favour of the Respondent as valid votes and made the consequent adjustments in the ballot paper accounts.

In my judgment, the election petition lacks material particulars in regard to the claim for inspection, scrutiny and recount of the said 2,953 ballot papers and therefore I ruled by my order dated July 21, 1967 that the election

petitioner need not adduce evidence regarding the alleged irregularities committed by the Returning Officer or the Assistant Returning Officers while scrutinising the ballot papers contained in the bundle of doubtful ballot papers. My finding on Issue No. (2) therefore is that the election petition does not contain adequate statement of material facts for scrutiny and recount of 2,958 ballot papers out of which 2172 were rejected; but the petitioner's case that his counting agents were denied the opportunity to examine the ballot papers and ignoring their objections the Counting Supervisors had put in the Respondents bundle 1,651 invalid ballot papers and they were accepted by the Assistant Returning Officers without scrutiny has to be tried and that part of his pleading cannot be dismissed on the ground that it does not contain an adequate statement of material facts.

The next question is whether the Election Petitioner has made out a *prima facie* case for inspection, scrutiny and recount of the ballot papers accepted as valid votes in favour of the candidates.

The counting of votes is done by the Returning Officer or the Assistant Returning Officers in exercise of the statutory powers and therefore the presumption is that all official acts were done in accordance with law. The burden is clearly on the Election Petitioner to make out a *prima facie* case to satisfy the court that recount is necessary in the interest of justice. At the very outset, I may state that the Election petitioner has not questioned the decision of the Returning Officer or the Assistant Returning Officers in respect of any particular ballot paper to be erroneous. His grievance is that the counting Supervisors without heeding to the protests of his counting agents put 1,651 invalid ballot papers in the Respondent's tray; that the work of sorting was done by the Counting Supervisors so briskly that it was not possible to note the particulars of the objectionable ballot papers put in the Respondent's tray and that the Assistant Returning Officers who were expected to scrutinise and count the ballot

papers sent in packets after sorting, did not scrutinise and count the ballot papers contained in the packets of the respective candidates and that they merely did test checking without scrutinising whether any invalid ballot papers, or the ballot paper of the wrong candidate had been included in the bundle of valid ballot papers. Though the petition does not make it clear, the petitioner's learned counsel Sri B. K. Ramachandra Rao submitted to the Court that the Election Petitioner was not challenging the correctness of the counting in the sense that there are any arithmetical mistakes; the learned counsel made it explicitly clear that inspection, scrutiny and recount is prayed on the sole ground that about 1,651 invalid ballot papers were put in the Respondent's tray by the counting Supervisors despite the objections of the petitioner's counting agents and that the Assistant Returning Officers did not scrutinise and count the valid ballot paper pakets sent by the Counting Supervisors.

The Petitioner has not alleged any bias or *mala fides* against the Returning Officer, the Assistant Returning Officers and the Counting Supervisors. The Respondent has alleged and he has also given evidence to the effect that the Assistant Returning Officers were helping the Election Petitioner in his election campaign and that when the counting commenced, he had objected to the scrutiny of the 'doubtful' ballot papers by the Assistant Returning Officers.

The Election Petitioner was not present at the counting on both the days. In the election petition he has stated that the averments made in paragraphs I, II, III and IV were based on information which he believes to be true. The Election Petitioner did not enter the witness box. For the petitioner his election agent B.G. Rajashekharappa was examined as P.W. 1, his counting agents N.M. Chandrashekharaiah (P.W. 2), K B Nagappa (P.W. 3) and H. M. Kasinathaiah (P. W. 4) have been examined. Besides, he has examined three counting assistants D. Kotrabasappa (P. W. 7), Bheema Rao, (P.W. 8) and R. Mallappa, (P.W. 9). The petitioner

has also examined the two Assistant Returning Officers, P. Sharanappa (P W 5) and Aumakshariah (P.W. 6). The Returning Officer Sri Brahmaravappa was summoned by the petitioner and though he was present in court was not examined. No documentary evidence has been adduced on behalf of the petitioner.

For the Respondent, the Respondent besides examining himself as R. W. 1 has examined his five counting agents Ramajois R.W 2, P Basavana Gowda R.W. 3. S Bharmappa R.W 4, S. Basavana Gowda R.W 5 and K. Revanasiddappa R.W. 6. The ballot paper accounts in Form No. 16 with respect to the 64 polling stations in the constituency were collectively marked as exhibit R 1 and the Form No. 20 account was marked as Exhibit R-2. It is unnecessary for the purpose of the decision of the case to refer to the oral evidence in great detail since the controversy between the parties lies with a very narrow compass.

The counting of votes for the Haribar Assembly Constituency and Chitradurga Parliamentary Constituency was conducted in the Davangere Town Municipal Hall on the 21st and 22nd of February 1967. The procedure of counting has been spoken to by P.Ws. 1, 5 and 6 and R.W. 1. Briefly stated, the procedure of counting followed according to the said witnesses was as follows. The layout of the counting hall was in accordance with the layout given in Annexure XI at page 130 of the Hand book for Returning Officers—General Elections. The Returning Officer Shri Brahmaravappa was the Deputy Commissioner and his two Assistant Returning Officers were Sri P. Sharnappa (P. W. 5) and Sri Aumakshriah (P. W. 6) who were Tahasildars. At one end of the counting hall on a raised platform was a table for the Returning Officer and the Assistant Returning Officers. To the left of the said platform five counting tables in a row with space left between each table were placed for counting the Assembly votes; similarly five counting tables were placed to the right of the said platform for counting the parliamentary votes. The said counting tables were numbered serialy as Numbers

1, 2, 3, 4 and 5 commencing from the end near the Returning Officer's table. On each counting table three trays were kept; one for putting 'apparently or invalid doubtful' ballot papers and one each for putting valid ballot papers candidatewise. To each counting table were assigned one Counting Supervisor and two counting assistants appointed by the Returning Officers. The petitioner as also the Respondent had appointed one counting agent each for each table.

The Counting Supervisor for Table No. 1 was one Sri Channaraj Urs, Commercial Tax Officer. The Petitioner's counting agent at the said table was one Sri Kadappa who has not been examined. The Respondent's counting agent at the said table was Sri Rama Jois R. W. 2. Sri Kotrabasappa R. W. 7 was one of the two counting assistants at the said table.

At counting Table No. 2, Sri Chitnis, Lecturer in the B. E. D. College of Engineering, Davanagere was the counting Supervisor. One Sri Shivayogi who has not been examined was the petitioner's counting agent and Sri P. Basavana Gowda, R. W. 3 was the Respondent's counting agent.

At counting table No. 3 Sri Boriah, Vice Principal. D.R.R. Polytechnic, Davanagere was the Counting Supervisor. The petitioner's counting agent on the 21st was Sri Nagappa, P.W. 3 and on 22nd one Sri Vamadevaiah. Sri Bharmappa, P.W. 4 was the Respondent's counting agent. Sri Mallappa P.W. 8 was one of the counting assistants.

At counting Table No. 4 Sri C. Krishnamachar, Health Officer, Davangere Municipality was the Counting Supervisors; Sri Bhima Rao P.W. 8 was one of the Counting Assistants; P.W 2 N. M. Chandrasekhariah and Sri S. Basavana Gowda P.W. 5 were the counting agents of the petitioner and Respondent respectively.

At counting Table No. 5, Sri S. Nagappa, Lecturer B. D. T. College of Engineering, Davangere was the counting Supervisor. Sri Kashinathiah P. W. 4 and

Sri Revana Siddappa, R.W. 6 were the counting agents of the petitioner and Respondent respectively at that table.

P.W. 1 Rajashekharappa was the election agent of the petitioner; the Respondent did not have any election agent and he was himself present at the counting. P.W. 1 and the Respondent were seated on the platform by the side of the Returning Officers.

Before the commencement of the counting on the 21st February 1967, the Returning officer explained to the counting staff and others present at the counting hall, the procedure of counting votes. Thereafter counting commenced.

The ballot boxes of Polling Stations Nos. 1 to 5 were brought to the counting hall first and placed in the same order on counting Table Nos. 1, 2, 3, 4 and 5. After satisfying that the seals put on the ballot boxes were intact, they were opened by the Counting Supervisors and the ballot papers were taken out. The parliamentary ballot papers were first separated from the assembly ballot papers and sent to the counting tables of parliamentary votes. Thereafter the counting assistants opened the folded ballot papers, sorted them into convenient bundles and handed them over to the counting Supervisors. Each Counting Supervisor then sorted the ballot papers: he put all 'apparently invalid or doubtful' ballot papers in the tray kept for the said purpose on his counting table and the rest of the ballot papers candidatewise in the trays of the petitioner and the respondent. After the sorting was done in this manner, the counting assistants made up the ballot papers into bundles of 50 each except for the last such bundle which may be less than 50. Each counting table was supplied with Form No. 16 for entering the ballot paper account of each polling station. Each counting Supervisor then filled up the ballot paper account in Form No. 16 showing among others the number of valid votes cast in favour of each candidate and the number of 'doubtful' ballot papers.

The sorted ballot papers of each candidate was made into one packet and so also the 'doubtful' ballot papers. Thus three packets of ballot papers of each station and the ballot paper account in Form No. 16 were sent from the table of the Counting Supervisors to the table of the Returning Officer.

On receipt of the packets of ballot papers and Form No. 16 account, the Assistant Returning Officers verified the ballot paper account in Form No. 16. Then each of the ballot papers contained in the 'doubtful' bundles were scrutinised. As to who did the scrutiny of the ballot papers contained in the 'doubtful' bundle, the parties are at variance. According to P.Ws. 5 and 6 the scrutiny was done by them, since the Returning Officer was engaged in the scrutiny and counting of the parliamentary votes. P. W. 5 however admitted that at the commencement of the counting the Respondent had objected to the scrutiny of the 'doubtful' bundles by the Assistant Returning Officers and therefore though the scrutiny was done by P Ws. 5 and 6 whenever there was any dispute regarding the acceptance or rejection of a ballot paper the matter was referred to the decision of the Returning Officer and the ballot paper concerned was dealt with in accordance with the said decision. According to the evidence of the Respondent, the scrutiny of the 'doubtful' bundles was conducted by the Returning officer only and not by P.Ws. 5 and 6. The dispute on this question is not however material for the purpose of the decision of the case since I have held under Issue No. (2) that the Election petition does not contain material facts for inspection, scrutiny and recount of the ballot papers contained in the 'doubtful' bundles. Both the sides are however agreed that the packets containing the 'valid' ballot papers were not scrutinised by the Returning Officer. The Returning Officers while they scrutinised each of the ballot papers in the 'doubtful' bundles gave opportunity to P.W. 1 and the Respondent to inspect the ballot papers and make their submissions and it is not disputed that the Returning Officers after scrutiny and rejection of the invalid ballot

papers only placed in the bundles of the appropriate candidates those 'doubtful' ballot papers which they held to contain a valid vote in favour of that candidate. As a result of the scrutiny and transfer of ballot papers in accordance with the said decisions, the entries in part II of Form No. 16 account were revised by making the necessary plus and minus entries. Then the ballot paper account was signed by of the Returning Officer and one of the Assistant Returning Officers.

After scrutiny of ballot papers in the 'doubtful' bundles, P.W. 5 or P.W. 6 made a test check of the bundles of valid ballot papers to see that they have been correctly sorted and did not contain any ballot paper which ought to be rejected or which ought to be placed in the bundle of ballot papers of the other candidate. Regarding the test checking done by P.Ws. 5 and 6, the parties are at veriance. The grievance of the petitioner as already stated is that they did not scrutinise any bundle to check whether they have been correctly sorted and did not contain any invalid ballot papers or the ballot papers of the wrong candidate. I will deal with this aspect of the evidence at a later stage. After scrutiny of the ballot papers in the 'doubtful' bundle and test checking one or two bundles from the candidate's packet of ballot papers, the result of polling was entered in Form No. 20 as soon as scrutiny and counting of each polling station was completed in the serial order of the polling stations. The result of polling of each station was also written on a block board.

The counting of votes of all polling stations was conducted in accordance with the above procedure and completed by about 1-30 P.M. on the 22nd. Then the grand total of the number of votes credited to each candidate was made and thereafter the declaration of the result was made at about 2-30 P.M. by the Returning Officer. According to P.W. 1, he requested P.Ws. 5 and 6, after the grand total of votes polled by each candidate was made for a scrutiny of the ballot papers contained in the valid ballot paper packets of the candidates which request was rejected by P. W.5 and that was approved by the Returning Officer.

The allegation in the election petition is that the Counting Supervisors despite the objections raised by the Petitioner's counting agents put about 1,651 ballot papers which according to the petitioner are invalid, in the tray of the Respondent and that when the Petitioner's counting agents protested, the Counting Supervisors told them that their objections should be raised before the Returning Officer or the Assistant Returning Officers and that it was the counting agents of the petitioner that requested the Assistant Returning Officer for scrutiny, but the Assistant Returning Officers did not entertain the complaint of the counting agents on the ground that the said ballot papers have already been scrutinised by the Counting Supervisors. This is what is stated in para III-B of the election petition:

> "After all the ballot papers were distributed in this manner into the three trays, the ballot papers in each tray were sorted into bundles of 50 each by the Counting Assistants and then sent on to the Assistant Returning Officers. The Assistant Returning Officers scrutinised only the ballot papers which were sent to them as doubtful ballot papers by the Counting Supervisors. The counting agents were given an opportunity to inspect and their contentions were heard before the Assistant Returning Officer in regard to the validity of these doubtful ballot papers. They rejected all the ballot papers which they considered as invalid and distributed the ballot papers which they considered as valid from among the doubtful ballot papers to the respective candidates. The Assistant Returning Officers did not scrutinise the other ballot papers sent by the Counting Supervisors as belonging to the respective candidates. In respect of these bundles, all that the Assistant Returning Officers did was to pick one or two bundles of 50 ballot papers and count only the number of ballot

papers in these bundles to verify if they contained only 50 ballot papers or not. The Assistant Returning Officers did not even open the bundles that were tied with a rubber band to find out if the bundles contained either invalid ballot papers or ballot papers belonging to the other candidate. When the petitioner's counting agents requested the Assistant Returning Officer to scrutinise all these ballot papers and to conclude the counting of the votes thereafter, the Assistant Returning Officers declined to accede to the request of the petitioner's counting agents on the ground that those bundles must be deemed to contain valid ballot papers belonging to the respective candidates only, they having already been scrutinised by the Counting Supervisors The Petitioner's Counting Agents brought to the notice of the Assistant Returning Officer that their objection were not at all considered and that the ballot papers in which objections were raised were not put in the tray of doubtful ballot paper. The Assistant Returning Officers, however, maintained that the scrutiny of these ballot papers having already been made by the Counting Supervisors, they did not wish to scrutinise or re-count all the ballot papers and that they would confine themselves to the scrutiny of only the ballot papers received by them as doubtful ballot papers. As the Returning Officer also shared the views of the Assistant Returning Officers, the counting agents of the petitioner were helpless in the matter."

The evidence adduced on behalf of the petitioner is at variance from what has been pleaded. P.Ws. 2, 3 and 4, his counting agents, do not say that they ever complained to the Assistant Returning Officers regarding the alleged objections. According to the evidence, it is P.W 1 who at the conclusion of the counting that represented to P.W.3

and 6 for scrutiny and recount. P.Ws. 5 and 6 also corroborate to some extent the evidence of P.W.1 in this regard. But P.Ws. 5 and 6 do not state that P.W. 1 had told them that the Counting Supervisors despite the objections of the Petitioner's counting agents had put about 1,651 invalid ballot papers and therefore they should scrutinise the valid ballot bundles. This is what P.W. 5 Sharanappa has stated :

> "After 1-30 P.M. on the 22nd the grand total of the votes secured by each candidate as also the invalid votes was made. After the grand total of votes secured was made, P.W. 1 told me that the supervisors had said that the A. R. Os would scrutinise the valid B. Paper bundles also and therefore he requested us to scrutinise the B. Papers contained in the two bundles of all the stations. I pointed out to him the provision of law that we are not required to scrutinise all B. Papers. Thereafter he kept quite."

In his cross-examination he stated :

> "P.W. 1 told me as also the other A R O. that the supervisors had said that we would scrutinise the valid ballot papers bundles. Before replying to P.W. 1, I did not make enquiries with any of the Supervisors whether they had said so."

To a question put by me, P.W. 5 stated that the Counting Supervisors were given instructions at the very commencement of the counting of votes on the 21st that all ballot papers that are doubtful should be put in the tray kept for the purpose and that he was satisfied that the Counting Supervisors had faithfully carried out the instructions. P W. 6 Sri Anmakshriah the other Assistant Returning Officer stated :

> "The bundle of the doubtful ballot papers from the last polling station on 22nd was scrutinised at about 1-30 P.M. At that time. P.W. 1 represented that we should scrutinise all the ballot papers from the candidate's bundles but,

P.W. 5 (the other A.R.O.) read out the Rules and said that request cannot be granted. P.W. one made a request alleging that the supervisors had not properly scrutinised and therefore the A.R.Os. ought to scrutinise. The R. O. also did not scrutinise the ballot papers contained in the bundles of the candidates."

The Petitioner has not adduced any evidence that any objections were raised by his counting agents at Table No. (2) and that Shri Chitnis the Counting Supervisor had put in the Respondent's tray any 'apparently invalid or doubtful' ballot papers. The Respondent has examined R.W. 3 Basavana Gowda, an Advocate, who was his counting agent and he has denied that the Counting Supervisor had put any ballot paper in the Respondent's tray which was objected to by the Petitioner's counting agent. That evidence stands unconradited.

Regarding Counting Table No. 1, the petitioner has not examined his Counting Agents though he was summoned.

The petitioner has examined his counting agents assigned to Counting Tables Nos. 3, 4 and 5. All of them state that they raised objections when the respective Counting Supervisors put invalid ballot papers in the tray of the respondent and that the sorting was so brisk that they could not note the particulars of the objectionable ballet papers. P.Ws. 2, 3 and 4 have stated that on a piece of paper they kept account of the invalid ballot papers put in the Respondent's tray by marking the figure 'I' but they admit that they have not noted the nature of the objections or the polling station to which the objectionable ballot paper related. The said note papers on which they maintained the accounts have not been produced. P.W. 7, P.W. 9 and P.W. 8 are the three counting Assistants examined to support the case of the petitioner that his counting agents had raised objections and the counting Supervisors did not heed to the said objections and had told that the objections can be raised

before the final scrutiny before the Assistant Returning Officer. P.Ws. 8 and 9 have said that P.Ws. 2 and 3 had note books in their hands on which they were making notes regarding the objectionable ballot papers. P.W. 7 is a Clerk is the Municipal High School, Davanagere. The petitioner was the President of the Davangere Municipality for some years and he was also a Municipal Councillor. P.W.8 also is a Clerk in the Municipal Office, Davangere. P.W. 9 is a clerk in the Executive Engineer's Office, Davangere. P.W. 7 8 and 9 have given the identical evidence which appears to me as high artificial.

P.W. 1, the election agent of the petitioner, stated that within a few minutes of the commencement of the counting while he was going round the counting tables, the petitioner's counting agents told the Counting Supervisors that they are putting invalid ballot papers into the tray of the Respondent and that the Counting Supervisors were replying that if they had any complaint, they should state them to the Returning Officer or the Assistant Returning Officer and the same kind of complaints were made by the counting agents on both the days. P.W. 1 is an advocate of 12 years standing at the Bar. He is not a stranger to the procedure of counting of votes. He admits that in the 1957 General Elections he was the election agent of one Sri Ramappa who had opposed the Respondent from the same constituency. If as matter of fact the Counting Supervisors were putting invalid or doubtful ballot papers in the tray of the Respondent had the petitioner's counting agents had brought this to the notice of P.W 1 even before the completion of the sorting of the votes from the first set of ballot boxes, it is most surprising that he would have remained silent until the counting of all votes from all stations was completed. Any reasonable man in the position of P W. 1 would have told the Returning Officer or the Assistant Returing Officers to correct them and there the sorting done by the Counting Supervisors. When the scrutiny and counting of the ballot papers from the first set of polling stations was done, P.W. 1 was admittedly present and as a reasonable man, would he have failed to ask P.Ws. 5 and 6 to

scrutinise all the ballot papers contained in the valid ballot paper bundles of the Respondent before the result of the polling from stations Nos. 1 to 5 were entered in Form No. 20?

P.W. 2 was the counting agent at Table No. 4. He stated that while sorting the ballot papers from polling Station No. 4, the counting supervisor was putting invalid ballot papers into the tray of the Respondent and that the Counting Supervisor over-ruled his objections. Form No. 16 account in Exhibit R-1 relating to Polling Station No. 4 shows that the Petitioner received 509 votes and the Respondent received 164 votes. The Respondent's votes would have been made up of three bundles of 50 ballot papers, P.W. 1 is unable to say as to whether P.W. 5 or P.W. 6 did the test checking in respect of polling Station No. 4. P.W. 5 has stated that the test checking was done in the following manner:

> "We opened the bundles and from the bundle relating to each candidate, we took out one small bundle and did the test checking by counting the number of ballot papers and scrutinising whether the bundles contained any invalid ballot papers."

At least one bundle of 50 ballot papers of the Respondent from Polling station No. 4 was admittedly test checked. If the said bundles had contained any invalid ballot papers, how is it that while doing the test checking, not a single invalid ballot paper was noticed by either P. W. 5 or P.W. 7 If the evidence of P. W. 1 is true, he would have certainly not failed to tell the concerned Assistant Returning Officer to scrutinise all ballot papers accepted as valid in favour of Resepondent from Polling Station No. 4 and P Ws. 5 or 6 would have had no difficulty in complying with such a request.

P. W. 1 has stated that he has not given instructions for drafting the election petition but he had given instructions to the petitioner before the election petition was filed. The Election petitioner has given in sub-paras IV (5), (6),

and (7) the nature of the objections raised in respect of 1,601 votes accepted as valid votes in favour of the Respondent. P. W. 1 has not stated that he has furnished the petitioner with the nature of the said objections. P.Ws. 2, 3 and 4 also have not stated that they furnished the figures of invalid ballot papers classifying them in accordance with the nature of objections. The Petitioner has not led any evidence to show how he got the figures classified in accordance with the nature of the objections are mentioned in sub-paras 5, 6, and 7 para IV of his election petition.

The Petitioner's case as alleged in the Election petition is that P.Ws. 5 and 6 did not do test checking of any bundle out of the valid ballot paper packets of the candidates. But the evidence of P.Ws, 5 and 6 does not support his case. The evidence of P.W. 5 in this regard, I have already referred to above wherein he has stated, that they did the test checking by counting the number the bundles contained any invalid ballot papers. He has also stated that while doing test checking, he did not find any mistakes. Though P.W. 6 at one stage stated that the test checking was done counting the number of ballot papers in the said bundle without verifying whether any of the ballot papers in the bundles checked were doubtful ballot papers, he has stated subsequently that he had read the instruction No. 17 (n) at page 78 of the Hand Book of Instructions for the Returning Officers and that he has complied with the said instructions, and while doing the test checking in accordance with the said instructions, he found no mistakes.

When test checking was done by scrutinising one bundle of 50 ballot papers each in respect of each candidate from each polling station before the result of that station is entered in Form No. 20 is it possible that either P.W. 5 or P. W. 6 would not have noticed invalid or doubtful ballot papers, is the counting supervisors had put as many as 1,651 invalid ballot papers in the counted bundles of the respondent ? Further, if the petitioner's case is true, would P.W. 1 have failed to ask for recount under Rule 63 (2) of

the Rules by applying in writing stating that the Counting Supervisors had included a large number of invalid ballot papers in the Respondent's bundles. The explanation offered by P.W. 1 that he did not apply for recount because P.W. 5 had overruled his oral objections and request for scrutiny, is not at all a convincing reason for not applying for recount.

It was urged by the learned counsel for the petitioner on the basis of the evidence of P.Ws. 5 and 6 that when the sorting of the ballot papers from the first set of boxes was going on P.W. 2 had raised a loud protest and that P.W. 5 called some of the counting supervisors and warned them to do the sorting carefully, the petitioner has made out a *prima facie* case for recount. The petitioner as already stated has not alleged any bias against the counting Supervisors. The Counting Supervisors have not been examined, nor the Returning Officer who was summoned and present in the court. P.W. 5 has admitted that the Respondent at the very commencement of the counting had objected to P.Ws. 5 and 6 making the scrutiny of the 'doubtful' ballot papers on the ground that they are partisans of the petitioner. P.Ws. 5 and 6 both belong to the Lingayat community and there is evidence to show that there are two sections in the Lingayat community that the petitioner is a leader of one section and the Respondent is a leader of another section. P.W. 5 has admitted that he and the petitioner are desciples of the same Mutt *viz.*, Sri Murigharajendra Mutt, Chitradurga. Suggestions have been made to P.W. 6 in his cross-examination that he was accompanying the petitioner who was a sitting M.L.A. during his election work. At one stage when P.W. 6 stated that he did not scrutinise the ballot papers while doing the test-checking, it appears to me that he has come to court to help the petitioner to the extent possible. If the evidence of P.Ws. 5 and 6 that they had heard shouts and protests coming from the counting agent of the petitioner, when the sorting of the ballot papers from the first set of boxes was proceeding and when the Returning Officer and the Assistant Returning Officers had no

work at the main table, would they have failed to go round the counting tables and supervise whether the sorting was done properly? Would they have failed to correct the Counting Supervisors then and there itself? I have given earlier the designations of the Counting Supervisors; their status is in no way inferior to the status of P.Ws. 5 and 6 who were Tahsildars.

On a careful consideration of the evidence adduced in the case I am not satisfied that the Counting Supervisors without heeding to the objections of the counting agents had put 'apparently invalid or doubtful' ballot papers in the tray of the respondent.

It was finally urged by the learned counsel for the petitioner that even if the petitioner has not *prima facie* established that any 'doubtful or apparently invalid' ballot papers had been put into the tray of the Respondent, since P.Ws. 5 and 6 did only test checking of one or two 50 ballot paper bundles and they did not scrutinise all the ballot papers, there is no counting by the Returning Officer in law and a declaration of the result without counting calls for recount.

Section 64 of the Act which provides for counting votes states:

> "At every election where a poll is taken, votes shall be counted by, or under the supervision and direction of the Returning Officer....." (underlining is mine)

Rule 53 (1) (a) empowers the Returning Officer to appoint such persons as he considers necessary to assist him in the counting. Sub rule (2) of Rule 56 enumerates the grounds for rejection of a ballot paper which can be done only by the Returning Officer which expression includes an Assistant Returning Officer. Sub-rule (3) of Rule 56 provides that before rejection, a ballot paper under Sub-rule (2) the Returning Officer shall allow each counting agent present a reasonable opportunity to inspect the ballot paper. Sub-rule (4) requires the Returning Officer to make

an endorsement on every ballot paper which he rejects, Sub-rule (6) states that every ballot paper which is not rejected under Rule 56 shall be counted as one valid vote. In the election petition it is stated that the Returning Officer was doing general supervision. The Counting Supervisors were appointed for assisting in the counting. The scrutiny of the 'doubtful' ballot papers was conducted by the Assistant Returning Officers in consulation with the Returning Officer. In regard to the ballot paper bundles of the candidates, there is no complaint that there was any error in counting. P.Ws 5 and 6 did test checking in respect of each polling station to satisfy themselves that the valid ballot paper bundles sorted by the Counting Supervisors contained no invalid ballot papers. P.Ws. 5 and 6 counted the valid ballot paper bundles and made the entries of votes polled in Form No. 20. When Section 64 of the Act provides that the counting may be done under the supervision and direction of the Returning Officer and what Rule 56 requires is that the rejection of a ballot paper can be done only by the Returning Officer, the procedure of counting conducted in the instant case in accordance with the Instruction No. 17 contained in the Hand Book for Returning Officers, in my opinion, is in accordance with law. On the material on record, I have no reason to believe that there has been a miscount or that counting was conducted improperly or irregularly. I am not *prima facie* satisfied that in order to decide the dispute raised by the petitioner and to do complete justice between the parties, inspection, scrutiny and recount of the ballot papers is necessary. Issue No. (3) is answered in the negative.

In view of my findings on Issues Nos. (2) and (3), Issue Nos. (4) and (9) have also to be answered against the petitioner.

The Respondent has not led any evidence on Issue Nos. (7) and (8). His learned counsel Sri K. R. Karanth submitted that the evidence on the said issue are necessary only if the court orders recount. The Respondent by his written statement purported to recriminate against the

petitioner. The Respondent has not alleged that any invalid votes improperly accepted by the Returning Officer in favour of the petitioner. His allegations in paras 2, 4, 5 and 42 of the counter statement are wholly irrelevant to the grant of relief of recount of the ballot papers of the petitioner. The petitioner has not calimed merely a recount of the ballot papers of the Respondent but a recount of all the ballot papers. On Issue No. (7) my finding is that the averments in the paras 2, 4, and 42 of the Respondent's counter statements do not contain any statement of material facts for granting recriminatory relies and therefore Issue No. (8) also is answered against the Respondent.

In the result, this Election petition fails and is dismissed with costs.

The Respondent's recrimination also fails and is dismissed but without costs. Advocate's fee Rs. 1,000.

(Sd/-). Govinda Bhat,
Judge, 10-8-1967.